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MILWAUKEE, WI 53202

EXAMINER
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PERREAULT, ANDREW D

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MICHAEL KRAUSE, RAINER HAEBERER, and  
MATTHIAS HORN

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Appeal 2015-005126  
Application 13/144,033<sup>1</sup>  
Technology Center 3700

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Before ANNETTE R. REIMERS, JEREMY M. PLENZLER, and  
NATHAN A. ENGELS, *Administrative Patent Judges*.

ENGELS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a non-final rejection of claims 1, 4–10, 12–16, 18, and 19. No other claims are pending. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> Appellants identify Robert Bosch GMBH as the real party in interest. App. Br. 2.

### ILLUSTRATIVE CLAIM

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A storage tank (12) of a metering system (10) for introducing a reducing agent (32) in an exhaust gas tract of an internal combustion engine, the storage tank (12) bounded by tank walls (14), a tank ceiling (16) and a tank bottom (18) and comprising at least one opening (50) for mounting a spill basin (20) and/or a heating element (24) closed by a flange (54), an opening for filling and emptying (46, 48), and a venting opening (62), thereby characterized in that the spill basin (20) rests on an inside of the tank bottom (18) and that all of the openings (46, 48, 50, 62) are located in a tank ceiling (16) above a region of said storage tank (12) flooded by the reducing agent (32) above a fluid level (42) of the reducing agent (32) and that openings for a supply line (38, 60) and a return line (58) are in the flange (54).

### THE REJECTIONS

Claims 1, 5–10, 12–16, 18, and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by either of Haeberer (WO 2007/031467 A2; Mar. 22, 2007) or Haeberer (WO 2008/138757 A1; Nov. 20, 2008).

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable in view of either Haeberer '467 or Haeberer '757.

Claims 1, 5–10, 12–16, 18, and 19 stand rejected under 35 U.S.C. § 103(a) as being obvious in view the combination of Applicants' admitted prior art ("AAPA") and Haeberer (US 8,184,964 B2; May 22, 2012).

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable in view of AAPA, Haeberer '964, and Hodgson (US 2009/0277156 A1; Nov. 12, 2009).

## ANALYSIS

In each of the Examiner’s rejections of claim 1, the Examiner concludes that a “spill basin” is not positively claimed<sup>2</sup>. Ans. 6. The Examiner states “Appellant[s] . . . fail[] to positively claim the spill basin in the limitation ‘characterized in that the spill basin rests on an inside of the tank bottom.’” Ans. 6. The Examiner states that claim 1 does not “indicate as to which element is ‘thereby characterized’” and interprets that phrase as a recitation of the intended use of the claimed invention. Ans. 6.

Appellants argue, and we agree, that claim 1 affirmatively requires a spill basin. *See* App. Br. 5–7; *see also* Reply Br. 2–3. Reading the plain language of claim 1 in light of Appellants’ Specification, we conclude claim 1 requires a tank bottom and a spill basin that rests on an inside of the tank bottom, among other limitations. The “thereby characterized” language simply indicates that the “storage tank” includes this additional feature.

The Examiner’s rejections do not include findings of a spill basin that rests on the inside of the tank bottom. The rejections also do not articulate a basis for concluding that the limitation would have been obvious in view of the prior art. Accordingly, we are constrained by the record before us to reverse the Examiner’s rejection of claim 1, as well as claims 5–10, 12–16, 18, and 19, each of which depends from claim 1.

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<sup>2</sup> The Examiner also interprets “at least one opening (50) for mounting a spill basin (20) and/or a heating element (24) closed by a flange (54)” to optionally recite “a heating element closed by a flange.” Reading the plain language of claim 1 in light of Appellants’ Specification, we conclude that limitation requires at least one opening closed by a flange. *See, e.g.*, Spec. Fig. 3, ¶ 37 (“The installation opening 50, which is closed by the flange 54 in the depiction pursuant to Figure 3, extends through the opening for venting 62 mentioned above.”); *see also* Reply Br. 3–4.

Appeal 2015-005126  
Application 13/144,033

DECISION

For the above reasons, we reverse the Examiner's rejections of claims 1, 5–10, 12–16, 18, and 19.

REVERSED